LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 12 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER, 1966

No. 341

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD and GENERAL ELECTRIC COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, GENERAL ELECTRIC COMPANY, IN OPPOSITION

DAVID L. BENETAR
Attorney for Respondent,
General Electric Company
420 Lexington Avenue
New York, N. Y. 10017

DAVID L. BENETAR
THOMAS F. HILBERT, JR.
of Counsel

IN THE

Supreme Court of the United States

OCTOBER, 1966

No. 341

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD and GENERAL ELECTRIC COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, GENERAL ELECTRIC COMPANY, IN OPPOSITION

Respondent, General Electric Company (hereafter "GE" or "the Company"), opposes the application of the International Union of Electrical, Radio and Machine Workers, AFL-CIO (hereafter "Petitioner" or "the Union"), for a writ of certiorari to review so much of an order of the United States Court of Appeals for the Second Circuit as dismisses the Union's petition for review as a claimed aggrieved party under an order of the National Labor Relations Board finding GE guilty of violating the National Labor Relations Act.

Upon remand from this Court following an earlier petition for a writ of certiorari (382 U. S. 366), the Company recognized the controlling effect of *Automobile Workers* v. *Scofield* (382 U. S. 205) on the Union's motion to intervene in the consolidated petitions by the National Labor Relations Board (to enforce) and the Company (for review of) the National Labor Relations Board's order, and renewed its motion to dismiss the Union's review petition on the ground that the Union is not a person aggrieved under the statute (29 U. S. C. §160[f]).

On March 17, 1966, the court below granted the Union's motion to intervene and also granted the Company's motion to dismiss Case No. 29577 (the Union's petition for review), noting that such dismissal will not adversely affect the Union's position in the litigation "because it will be permitted as intervenor to raise all relevant issues upon review of the other two cases" (Petition, p. 3a).

Question Presented

The sole question raised by the Union's petition is whether, under the facts of this case and where it has been granted the full rights of intervenor in both the Board's enforcement proceeding and the Company's review proceeding, the Union is a "person aggrieved" and may insist upon maintaining its own proceeding relative to the Board's decision and order after a finding in the Court of Appeals to the contrary.

The Company contends that this question should be answered "no."

ARGUMENT

I.

The Petition Raises Only a Trivial Question of No Substantial Significance to Petitioner in This Case.

As already noted, the court below, upon remand, clearly followed this Court's direction by considering the effect, if any, on this case of this Court's decision in *Automobile Workers* v. *Scofield, supra.* Thus the court stated and, we submit, properly, that nothing in *Scofield* required a denial of the Company's motion to dismiss the Union's petition (Petition, p. 3a).

In its *Scofield* opinion this Court defined the status of an intervenor in a Labor Board court case as follows (*supra,* at p. 215):

> "The rights typically secured to an intervenor in a reviewing court—to participate in designating the record, to participate in pre-hearing conferences preparatory to simplification of the issues, to file a brief, to engage in oral argument, to petition for rehearing to the Appellate Court or to this Court for certiorari—are not productive of delay nor do they cause complications in the appellate courts. * * * *Participation in defining the issues before the court* guarantees that all relevant material is brought to its attention, and makes the briefs on the merits more meaningful." (Emphasis ours.)

As the opinion of the court below establishes, this Court's view of intervenor status received important consideration.

Thus the court below stated that this petitioner "will not be adversely affected by a dismissal of No. 29577 because it will be permitted as an intervenor to raise all relevant issues upon review of the other two cases" (Petition, p. 3a).

In the totality of the case before the Labor Board and especially the importance to the labor-management community of the substantial issues involved, the claim of aggrievement—which as we shall soon see is itself without merit—is clearly insignificant. The petition, we submit, raises at best a trivial question, totally inappropriate for review by this Court.

II.

The Petitioner Is Not a Person Aggrieved Within the Meaning of the Statute.

In *Scofield*, this Court expressed the rule for determining a "person aggrieved" within the meaning of Section 10(f) of the Act with the correlative right independently to institute a review proceeding involving a decision of the Labor Board. Thus the Court stated (*supra*, at p. 210):

> "* * * if the Board determined that a complaint should be dismissed, the charging party has a statutory right to review as a 'person aggrieved.' A hybrid situation occurs when the Board *dismisses certain portions of the complaint* and issues an order on others. * * * the charging party is aggrieved with respect to the portion of the decision *dismissing the complaint.*" (Italics ours.)

In the view of the court below, the facts of this case did not establish a "person aggrieved" status upon which to ground an independent party status. It felt and found that the ends of justice and all of the Union's legitimate interests would best and fully be served by granting the Union's motion to intervene and dismissing its petition for review.

In cases such as the instant one, as the Board itself recognized (Board Memorandum in Response to the Union's First Petition, pp. 4-5), the court of appeals is engaging in an evaluation of facts. In the present case that evaluation entailed the measurement of the degree to which the Board's order encompassed the relief sought by the Union or differed significantly from that requested by the Union. The court obviously concluded that any differences were so insignificant that the Union was not really "aggrieved." This evaluation and its consequent conclusion that review is not warranted was expressed by the Labor Board as follows (Board Memorandum in Response to the Union's First Petition, p. 5):

> "Although the Board believes that the Court may have erred in concluding that the Union was not 'aggrieved,' the Court's decision appears to rest on the facts of the particular case, and thus presents no issue warranting review by this Court."

In the papers presented by the Union to the court below the Union made no claim that any part of the Board's complaint had been dismissed and relied exclusively on the nature of the order entered by the Board and its claimed inadequacy in certain respects to establish its claimed status. Even *after* this Court's remand, the Union relied solely on such claimed inadequacy. Thus it stated as fol-

lows (Motion for Leave to Intervene, to Consolidate Cases and Defer Consideration of Motion to Dismiss Until Consideration on the Merits, p. 4):

> "While the Board *did not in the instant case dismiss any portion of the complaint,* the Board did fail to make certain findings supported by substantial evidence which were within the issues covered by the complaint and did fail to issue relief requested by the Union." (Emphasis added.)

For the first time in the present petition the Union claims aggrievement based upon a dismissal of a paragraph of the complaint. (Petition, p. 5.) When viewed in context, the claim is totally lacking in substantiality and manifestly not of the type which could warrant acknowledgment of the status of an aggrieved person in any real sense of that term.

Under such circumstances where the decision complained of involves solely a question of fact, it is clear that this Court's review is totally unwarranted. (See *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508, 509.)

III.

There Is No Conflict Between the Circuit Courts for Review by This Court.

The cases relied upon by petitioner to establish a claimed split by the Circuit Courts in the interpretation of Section 10(f) of the Labor Act do not we submit establish such a split. Thus *Local 833, UAW* v. *N. L. R. B.*, 300 F. 2d 699 (D. C. Cir. 1962) and *Albrecht* v. *N. L. R. B.*, 181 F. 2d 652 (7th Cir. 1950) cited by petitioner involved a dismissal of a material portion of the complaint and the concomitant denial of the relief thereby. *Perfection Mattress & Spring Co.* v. *N. L. R. B.*, 48 LRRM 2167 (5th Cir. 1961) merely involves a factual conclusion that under the circumstances there presented the employer was entitled to institute a review proceeding.

Thus, we submit, the legal principles governing the interpretation of "person aggrieved" as a status under Section 10(f) are not, either in the cases cited or in the instant case, questioned or in conflict. All recognize that a person when truly aggrieved by reason of a Board order denying in whole or in part the relief sought may petition for review of such order. But as we have shown, the determination as to whether such aggrievement exists in fact and in substance is for the court of appeals and review of its findings, except in the most extraordinary situations—surely not here presented—should be denied.

IV.

No Important Question of Federal Law Is Raised by the Union's Petition.

CONCLUSION

For the reasons set forth above and in view of the factual nature of the decision of the court below, and in the absence of any contention that the court's decision in any way abused its discretion, the petition for the writ of certiorari should be denied.

Respectfully submitted,

DAVID L. BENETAR
Attorney for Respondent,
General Electric Company
420 Lexington Avenue
New York, N. Y. 10017

DAVID L. BENETAR
THOMAS F. HILBERT, JR.
of Counsel